

[NOT FOR PUBLICATION ON WL OR LEXIS]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: 6/30/10

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RICHARD RALPH MARTINEZ,

Plaintiff,

-against-

SOCIAL SECURITY ADMINISTRATION (SSA),
FIELD OFFICE MANAGER I & FIELD OFFICE
MANAGER II, individually and in their official
capacities,

Defendants.
----- X

09 Civ. 9494 (DAB) (AJP)

REPORT AND RECOMMENDATION

ANDREW J. PECK, United States Magistrate Judge:

To the Honorable Deborah A. Batts, United States District Judge:

By Order dated June 8, 2010, I advised plaintiff as follows:

The Pro Se Office has advised me that they have been unable to send you the Rule 4 service package – Federal express returned one as having an insufficient address and the second indicating you had refused it.

Plaintiff Martinez is to confirm his address in writing to me by June 22, 2010.
Failure to do so will result in dismissal of this action. . . .

(Dkt. No. 12: 6/8/10 Order.)^{1/}

^{1/} The Court also notes that the certified mail copy of its May 18, 2010 Order instructing Martinez about the need to serve the complaint, was returned by the Post Office as "unclaimed, unable to forward." The Court has not received the certified mail receipt for, or return of the certified mail copy, my June 8, 2010 Order.

The Court has not received any response from plaintiff Martinez. Martinez was informed that his failure to comply with the June 8 Order "will result in dismissal of this action." Despite this clear warning, Martinez has failed to respond. If the address the Court has for plaintiff Martinez is no longer valid, the Court has no way to contact him. If the address is valid and Martinez nevertheless is ignoring communications from the Court, then his conduct is akin to contempt. Finally, there is no indication that Martinez has served the defendants with the complaint.^{2/}

CONCLUSION

Accordingly, the Court should DISMISS Martinez's complaint without prejudice for failure to prosecute and failure to comply with Court orders.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Deborah A. Batts, 500 Pearl Street, Room 2510, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Batts (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections

^{2/} While this case is against the Social Security Administration, it is not an appeal from denial of benefits. Rather, Martinez claims damages of \$20 million because of alleged delays in sending Martinez a replacement Social Security card. The claim appears frivolous.

for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

Dated: New York, New York
June 30, 2010

Respectfully submitted,



Andrew J. Peck
United States Magistrate Judge

Copies to: Richard Ralph Martinez (Regular & Certified Mail to last reported address:
20 Catherine Slip, Apt. # 7G, New York, NY 10038)
Judge Deborah A. Batts